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Legislative History – Montana Session Law

Chapter: 504 Session L: 2003
Bill Number: SB 95

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☒
Final Version of Bill	☒

House	Senate
Committee: Human Services	Committee: Public Health, Welfare and Safety
Hearing Date(s): March 7, 2003	Hearing Date(s): January 22, 2003
Committee Report:	Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: FLR

Date: March 19, 2024

Notes: If you want to listen to the hearings, you will need to contact the Montana Historical Society for the cassette tapes. If you want to see the exhibits from the hearings, you will need to contact Legislative Services Division.

Bill Draft Number: LC0424
Bill Type - Number: SB 95
Short Title: Revise child abuse and neglect laws
Primary Sponsor: Emily Stonington (D) SD 15
Chapter Number: 504

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 60

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/25/2003			
(S) Signed by Governor	04/25/2003			
(S) Transmitted to Governor	04/22/2003			
(H) Signed by Speaker	04/22/2003			
(S) Signed by President	04/22/2003			
(S) Returned from Enrolling	04/15/2003			
(C) Printed - New Version Available	04/15/2003			
(S) Sent to Enrolling	04/11/2003			
(S) 3rd Reading Passed as Amended by House	04/11/2003	50	0	
(S) Scheduled for 3rd Reading	04/11/2003			
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/10/2003	49	0	
(S) Scheduled for 2nd Reading	04/10/2003			
(S) Scheduled for 2nd Reading	04/09/2003			
(H) Returned to Senate with Amendments	04/04/2003			
(H) 3rd Reading Concurred	04/04/2003	93	7	
(H) Scheduled for 3rd Reading	04/04/2003			
(H) 2nd Reading Concurred	04/03/2003	96	4	
(H) Scheduled for 2nd Reading	04/03/2003			
(C) Printed - New Version Available	04/01/2003			
(H) Committee Report--Bill Concurred as Amended	04/01/2003			(H) Human Services
(H) Committee Executive Action--Bill Concurred as Amended	04/01/2003	13	0	(H) Human Services
(H) Hearing	03/07/2003			(H) Human Services
(H) Referred to Committee	02/26/2003			(H) Human Services
(H) First Reading	02/26/2003			
(S) Transmitted to House	01/31/2003			
(S) 3rd Reading Passed	01/31/2003	47	3	
(S) Scheduled for 3rd Reading	01/31/2003			
(S) 2nd Reading Passed on Voice Vote	01/30/2003	46	0	
(S) Scheduled for 2nd Reading	01/30/2003			

(C) Printed - New Version Available	01/28/2003			
(S) Committee Report--Bill Passed as Amended	01/28/2003			(S) Public Health, Welfare and Safety
(S) Committee Executive Action--Bill Passed as Amended	01/28/2003	10	0	(S) Public Health, Welfare and Safety
(S) Hearing	01/22/2003			(S) Public Health, Welfare and Safety
(S) Fiscal Note Printed	01/15/2003			
(S) Fiscal Note Signed	01/14/2003			
(S) Fiscal Note Received	01/13/2003			
(S) First Reading	01/06/2003			
(S) Referred to Committee	12/20/2002			(S) Public Health, Welfare and Safety
(S) Fiscal Note Requested	12/18/2002			
(C) Introduced Bill Text Available Electronically	12/16/2002			
(S) Introduced	12/16/2002			
(C) Pre-Introduction Letter Sent	12/06/2002			
(C) Draft in Assembly/Executive Director Review	12/05/2002			
(C) Draft in Final Drafter Review	12/04/2002			
(C) Draft in Input/Proofing	12/04/2002			
(C) Draft to Drafter - Edit Review [JLN]	12/04/2002			
(C) Draft in Edit	12/04/2002			
(C) Draft Taken by Drafter	12/03/2002			
(C) Pre-Introduction Letter Sent	11/21/2002			
(C) Draft in Assembly/Executive Director Review	11/21/2002			
(C) Draft in Final Drafter Review	11/13/2002			
(C) Bill Draft Text Available Electronically	11/08/2002			
(C) Draft in Input/Proofing	11/08/2002			
(C) Draft to Drafter - Edit Review [JLN]	11/08/2002			
(C) Draft in Edit	11/08/2002			
(C) Draft in Legal Review	11/06/2002			
(C) Draft Taken Off Hold	11/06/2002			
(C) Draft On Hold	10/29/2002			
(C) Draft to Requester for Review	10/29/2002			
(C) Draft Request Received	08/27/2002			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Children, Families, Health, and Human Services Interim Committee	
Drafter	Fox	Susan
By Request Of	Department of Public Health and Human Services	
Primary Sponsor	Stonington	Emily

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Civil Procedure		Simple	CIV
Family Law (see also: Minors)		Simple	FAM
Minors (see also: Family Law)		Simple	MIN

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: Y
Session Law Ch. Number: 504
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-03	

Section 3. Effective date. [This act] is effective July 1, 2003.

Approved April 24, 2003

CHAPTER NO. 504

[SB 95]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ *provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection*;

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)~~*(b)* achieve these purposes in a family environment *and preserve the unity and welfare of the family* whenever possible;

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)~~*(c)* ensure that there is no forced removal of a child from the family based solely on an ~~unsubstantiated~~ allegation of abuse or neglect *unless the department has reasonable cause to suspect that the child is at imminent risk of harm*;

~~(f)~~*(d)* recognize that a child is entitled to assert the child's constitutional rights;

~~(g)~~*(e)* ensure that all children have a right to a healthy and safe childhood in a ~~nurturing~~ permanent ~~family or in the closest possible substitute~~ *placement*;

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted;~~ and

~~(j)~~*(f)* ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) *(a)* "Abandon", "abandoned", and "abandonment" mean:

~~(a)~~*(i)* leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)~~*(ii)* willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)~~*(iii)* that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)~~*(iv)* the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(b) a person providing care in a day-care facility;

~~(c)~~*(c)* an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~*(d)* any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual *physical or psychological* harm to a ~~child's health or welfare~~ *child*;

(ii) substantial risk of *physical or psychological* harm to a ~~child's health or welfare~~ *child*; or

(iii) abandonment.

(b) The term includes actual *physical or psychological* harm *to a child* or substantial risk of *physical or psychological* harm *to a child* by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute *physical or psychological* harm to a ~~child's health or welfare~~ *child*.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ *decisionmaking meeting*" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~*(11)* "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ *41-1-501* under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~*(12)* "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~*(13)* "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~*(14)* "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~*(15)* "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme

pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~*(16)* "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, *or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.*

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social

work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction ~~and venue~~. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) ~~The~~ *Either the* county where a youth is located *or a county where the youth's parent or guardian resides* has initial jurisdiction over a youth alleged to be a youth in need of care. ~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~"

Section 4. Section 41-3-113, MCA, is amended to read:

"**41-3-113. Appeals.** *(1)* Appeals of court orders or decrees made under this part ~~shall~~ *must* be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from~~; however, the~~ *and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The* supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."

Section 5. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group ~~conference~~ *decisionmaking meeting* for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having ~~legal~~ *physical* custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ *arrangements acceptable to the agency for the care of the child have been made by the parents.*

(4) ~~A~~ *Except as provided in the federal Indian Child Welfare Act, if applicable, a* show cause hearing must be held within ~~10~~ *20* days~~, excluding weekends and holidays,~~ of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(4)~~*(6)* The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 7. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

~~(iv)~~*(v)* termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~*(vi)* appointment of a guardian pursuant to 41-3-444;

~~(vi)~~*(vii)* a determination that preservation or reunification services need not be provided; or

~~(vii)~~*(viii)* any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vi)~~ *(1)(a)(vii)* or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

~~(iii)~~*(iv)* clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) *(a)* Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of ~~all petitions~~ *the initial petition and a petition to terminate the parent-child legal relationship* at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group ~~conference~~ *decisionmaking meeting*, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) ~~Orders~~ *If appropriate, orders* issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 8. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — order — service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as

provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment.* The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 9. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing — order. (1) (a) ~~A~~ *Except as provided in the federal Indian Child Welfare Act, a* show cause hearing must be conducted within ~~10~~ *20* days~~, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of

the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 10. Section 41-3-434, MCA, is amended to read:

"41-3-434. Stipulations. Subject to approval by the court, ~~a parent~~ *the parties* may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~

(3) the disposition*; or*

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."

Section 11. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, *stipulation by the parties pursuant to 41-3-434,* and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the *affected* youth is admissible ~~according to the Montana Rules of Evidence~~ *according to the Montana Rules of Evidence.*

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ *may* make ~~written~~ *oral* findings, *and following the adjudicatory hearing, the court shall make written findings* on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing *that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined*;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 12. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, *stipulation by the parties pursuant to 41-3-434,* and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's *custodial* parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(b)~~*(c)* grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~*(d)* transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~*(e)* order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~*(f)* order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 13. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody~~, not to exceed a total of 6 months~~,, *not to exceed 6 months,* upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; *or*

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) *long-term custody when the child is in a* planned ~~alternative~~ permanent ~~placement~~ *living arrangement* pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) dismissal.

~~(3)~~*(5)* The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~*(6)* If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~*(7)* If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~*(8)* In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~*(9)* A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 14. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed *in either an adoptive or a guardianship placement*, the court shall *conduct a hearing and* make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment*. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) *long-term custody if the child is in* a planned permanent living arrangement ~~for a child if the evidence demonstrates~~ *established* by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 15. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for ~~a planned permanent living arrangement~~ *long-term custody* pursuant to 41-3-445, or a petition to dismiss must be filed."

Section 16. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(2)~~*(4)* At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~*(5)* A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~*(6)* There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 17. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding *established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable,* that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ *a* child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 18. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ *permanent* placement proceedings held pursuant to ~~41-3-610~~ *41-3-445*."

Section 19. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 20. Section 42-1-103, MCA, is amended to read:

"42-1-103. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ *child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that* is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual."

Section 21. Section 42-3-212, MCA, is amended to read:

"42-3-212. Court waiver for relatives. In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement *and postplacement* evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.~~"

Section 22. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records — nonidentifying information — consensual release. (1) The department or *an* authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122*; and*

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 23. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate — certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 24. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ *the patient's* physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ *the patient's* health care or unless authorized under subsection ~~(1)(i)~~ *(1)(j)*;

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

~~(i)~~*(j)* a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

~~(j)~~*(k)* the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ *This* part ~~authorizes~~ *does not authorize* the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ *in which* disclosure is otherwise prohibited by law."

Section 25. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535~~(1)(i)~~*(1)(j)*, the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) *of this section* to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535~~(1)(i)~~*(1)(j)*, that the requirements of subsection (1) *of this section* for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, ~~where~~ *when* authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 26. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. ~~If~~ *or if* the health care information is ~~required in a subsequent~~ *to be presented as evidence in a* court proceeding involving child abuse~~, the information may be disclosed only in camera and documents~~ *pursuant to Title 41, chapter 3. Documents* containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 27. Section 50-16-605, MCA, is amended to read:

"50-16-605. Judicial, legislative, and administrative proceedings — testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603*(6) and* (7)."

Section 28. Section 52-2-115, MCA, is amended to read:

"52-2-115. Department to accept custody of children ~~committed by courts~~. The department shall accept the ~~guardianship or~~ *physical* custody of children ~~committed by the courts to the department~~ *transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3,* and arrange for their care."

Section 29. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

(d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~*(5)* "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~*(6)* "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~*(7)* "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~*(8)* "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~*(9)* "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

. ~~(9)~~*(10)* "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~*(11)* "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, *kinship foster homes,* youth group homes, *youth shelter care facilities,* child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~*(12)* "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~*(13)* "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office,

department, or other appropriate social services agency has made other provisions for the children's care."

Section 30. Section 52-2-603, MCA, is amended to read:

"**52-2-603. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, *kinship foster homes,* youth group homes, *youth shelter care facilities,* child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, *kinship foster homes,* youth group homes, *youth shelter care facilities,* child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

Section 31. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ *that* does not provide skilled or intermediate nursing care;

(2) a youth foster home, *a kinship foster home, a youth shelter care facility, a transitional living program,* or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 32. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, *kinship foster homes, youth shelter care facilities,* youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster *home, kinship foster home, youth shelter care facility,* or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ *eight* or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

Section 33. Repealer. Section 41-3-610, MCA, is repealed.

Section 34. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 35. Directions to code commissioner. Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003

legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

Approved April 25, 2003

CHAPTER NO. 505

[SB 155]

AN ACT REVISING THE TAXATION OF CLASS EIGHT PROPERTY BY PROVIDING THAT THE COMPUTATIONS FOR DETERMINING WHETHER THE CLASS EIGHT RATE IS TO BE REDUCED ARE TO BE MADE AT LEAST 1 YEAR AND 2 MONTHS PRIOR TO THE AFFECTED TAX YEAR TO ALLOW FOR LEGISLATIVE ACTION; CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT TAX RATE IS TO BE REDUCED; AND AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TRANSITION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

SENATE BILL NO. 95

INTRODUCED BY E. STONINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REMOVING PERSONS PROVIDING DAY CARE FROM THE DEFINITION OF "A PERSON RESPONSIBLE FOR A CHILD'S WELFARE"; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR INFORMAL PARENTAL AGREEMENTS; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE DEPARTMENT CONSENTS AND INFORMS THE COURT OF AVAILABLE RESOURCES; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR DEPARTMENT APPROVAL OF STIPULATIONS AND INCLUDING AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-423, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)~~(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)~~(c) ensure that there is no forced removal of a child from the family based solely on an ~~unsubstantiated~~ allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

~~(f)~~(d) recognize that a child is entitled to assert the child's constitutional rights;

~~(g)~~(e) ensure that all children have a right to a healthy and safe childhood in a ~~nurturing~~ permanent ~~family or in the closest possible substitute~~ placement;

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted;~~ and

~~(j)~~(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the

department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

~~(a)~~(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)~~(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)~~(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)~~(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

~~(c)~~(b) an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~(c) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding

of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a ~~child's health or welfare~~ child;

(ii) substantial risk of physical or psychological harm to a ~~child's health or welfare~~ child; or

(iii) abandonment.

(b) The term includes actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a ~~child's health or welfare~~ child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial~~

~~or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~(11) "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~(12) "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~(13) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~(14) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~(15) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~(16) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered

financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction ~~and venue~~. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) ~~The~~ Either the county where a youth is located or a county where the youth's parent or guardian resides has initial jurisdiction over a youth alleged to be a youth in need of care. ~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~"

Section 4. Section 41-3-113, MCA, is amended to read:

"41-3-113. Appeals. (1) Appeals of court orders or decrees made under this part ~~shall~~ must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from~~; however, the~~ and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."

Section 5. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group ~~conference~~ decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with

children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having ~~legal~~ physical custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ informal parental agreements or other arrangements acceptable to the agency have been made that protect the health and safety of the child.

(4) ~~A~~ Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within ~~10~~ 20 days~~, excluding weekends and holidays,~~ of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(4)~~(6) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 7. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

~~(iv)~~(v) termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~(vi) appointment of a guardian pursuant to 41-3-444;

~~(vi)~~(vii) a determination that preservation or reunification services need not be provided; or

~~(vii)~~(viii) any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vi)~~ (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

~~(iii)~~(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of ~~all petitions~~ the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section

may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group ~~conference~~ decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) ~~Orders~~ If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 8. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, informal parental agreements, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate

homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the

child's home. Concurrent planning may be used."

Section 9. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 10. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) ~~A~~ Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within ~~10~~ 20 days~~, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay

evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation

to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 11. Section 41-3-434, MCA, is amended to read:

"41-3-434. Stipulations. Subject to approval by the department and the court, a parent or parents, guardian, or other person having legal custody may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~

(3) the disposition; or

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."

Section 12. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers

relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible ~~according to the Montana Rules of Evidence~~.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ may make ~~written~~ oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 13. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition -- hearing -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment,

making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(b)~~(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 14. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department does not require that the child be placed in substitute care.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody~~, not to exceed a total of 6 months,~~ upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody when the child is in a planned ~~alternative~~ permanent ~~placement~~ living arrangement pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) dismissal.

~~(3)~~(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 15. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another

hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement ~~for a child if the evidence demonstrates~~ established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued,

frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 16. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for ~~a planned permanent living arrangement~~ long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed."

Section 17. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(2)~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~(5) A guardian ad litem must be appointed to represent the child's best interests in any hearing

determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~(6) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 18. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a

reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 19. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ permanent placement proceedings held pursuant to ~~41-3-610~~ 41-3-445."

Section 20. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 21. Section 42-1-103, MCA, is amended to read:

"42-1-103. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual."

Section 22. Section 42-3-212, MCA, is amended to read:

"42-3-212. Court waiver for relatives. In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement and postplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.~~"

Section 23. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records -- nonidentifying information -- consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; and

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 24. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate -- certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department

shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 25. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ the patient's health care or unless authorized under subsection ~~(1)(i)~~ (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

~~(i)~~(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

~~(j)~~(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ This part ~~authorizes~~ does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ in which disclosure is otherwise prohibited by law."

Section 26. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535~~(1)(i)~~(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535~~(1)(i)~~(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, ~~where~~ when authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested

health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 27. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202~~. If~~ or if the health care information is ~~required in a subsequent~~ to be presented as evidence in a court proceeding involving child abuse~~, the information may be disclosed only in camera and documents~~ pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the

proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 28. Section 50-16-605, MCA, is amended to read:

"50-16-605. Judicial, legislative, and administrative proceedings -- testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7)."

Section 29. Section 52-2-115, MCA, is amended to read:

"52-2-115. Department to accept custody of children ~~committed by courts~~. The department shall accept the ~~guardianship or~~ physical custody of children ~~committed by the courts to the department~~ transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3, and arrange for their care."

Section 30. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

(d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~(5) "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~(8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~(9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(9)~~(10) "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~(12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~(13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office, department, or other appropriate social services agency has made other provisions for the children's care."

Section 31. Section 52-2-603, MCA, is amended to read:

"52-2-603. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate

and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

Section 32. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 33. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of

zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

NEW SECTION. **Section 34. Repealer.** Section 41-3-610, MCA, is repealed.

NEW SECTION. **Section 35. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 36. Directions to code commissioner.** Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

- END -

SENATE BILL NO. 95

INTRODUCED BY STONINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; ~~REMOVING PERSONS PROVIDING DAY CARE FROM THE DEFINITION OF "A PERSON RESPONSIBLE FOR A CHILD'S WELFARE";~~ REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR INFORMAL PARENTAL AGREEMENTS; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE DEPARTMENT CONSENTS AND INFORMS THE COURT OF AVAILABLE RESOURCES; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR DEPARTMENT APPROVAL OF STIPULATIONS AND INCLUDING AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-423, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)~~(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)~~(c) ensure that there is no forced removal of a child from the family based solely on an ~~unsubstantiated~~ allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

~~(f)~~(d) recognize that a child is entitled to assert the child's constitutional rights;

~~(g)~~(e) ensure that all children have a right to a healthy and safe childhood in a ~~nurturing~~ permanent ~~family or in the closest possible substitute~~ placement;

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted;~~ and

~~(j)~~(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the

department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

~~(a)~~(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)~~(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)~~(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)~~(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(B) A PERSON PROVIDING CARE IN A DAY-CARE FACILITY;

~~(c)~~(~~b~~)(C) an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~(~~c~~)(D) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized

by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a ~~child's health or welfare~~ child;

(ii) substantial risk of physical or psychological harm to a ~~child's health or welfare~~ child; or

(iii) abandonment.

(b) The term includes actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a ~~child's health or welfare~~ child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails~~

~~to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~(11) "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~(12) "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~(13) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~(14) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~(15) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~(16) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or

fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court

services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction ~~and venue~~. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any

purpose.

(2) ~~The~~ Either the county where a youth is located or a county where the youth's parent or guardian resides has initial jurisdiction over a youth alleged to be a youth in need of care. ~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~"

Section 4. Section 41-3-113, MCA, is amended to read:

"41-3-113. Appeals. (1) Appeals of court orders or decrees made under this part ~~shall~~ must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from~~; however, the~~ and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."

Section 5. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that

otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group ~~conference~~ decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related

screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent

provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having ~~legal~~ physical custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ informal parental agreements or other arrangements acceptable to the agency have been made that protect the health and safety of the child.

(4) ~~A~~ Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within ~~10~~ 20 days~~, excluding weekends and holidays,~~ of the filing of the initial petition unless

otherwise stipulated by the parties pursuant to 41-3-434.

(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(4)~~(6) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 7. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

~~(iv)~~(v) termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~(vi) appointment of a guardian pursuant to 41-3-444;

~~(vi)~~(vii) a determination that preservation or reunification services need not be provided; or

~~(vii)~~(viii) any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vi)~~ (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected

and stating the basis for the petition.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

~~(iii)~~(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of ~~all petitions~~ the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child

who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group ~~conference~~ decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) ~~Orders~~ If appropriate, orders issued under this chapter must contain a notice provision advising a

child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 8. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, informal parental agreements, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative

out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used."

Section 9. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home

to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 10. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) ~~A~~ Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within ~~10~~ 20 days~~, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for

a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to

part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 11. Section 41-3-434, MCA, is amended to read:

"41-3-434. Stipulations. Subject to approval by the department and the court, a parent or parents, guardian, or other person having legal custody may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~

(3) the disposition; or

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."

Section 12. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the

whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible ~~according to the Montana Rules of Evidence~~ AT THE DISCRETION OF THE PRESIDING JUDGE.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ may make ~~written~~ oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or

to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 13. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition -- hearing -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(b)~~(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 14. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department does not require that the child be placed in substitute care.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody~~, not to exceed a total of 6 months,~~ upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody when the child is in a planned ~~alternative~~ permanent ~~placement~~ living arrangement pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) dismissal.

~~(3)~~(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 15. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of

this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement ~~for a child if the evidence demonstrates~~ established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 16. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for ~~a planned permanent living arrangement~~ long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed."

Section 17. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(2)~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~(5) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~(6) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 18. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to

render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 19. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ permanent placement proceedings held pursuant to ~~41-3-610~~ 41-3-445."

Section 20. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access

to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 21. Section 42-1-103, MCA, is amended to read:

"42-1-103. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with

respect to a child by a parent to an agency or individual."

Section 22. Section 42-3-212, MCA, is amended to read:

"42-3-212. Court waiver for relatives. In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement and postplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.~~"

Section 23. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records -- nonidentifying information -- consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; and

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 24. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate -- certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 25. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used

in any proceeding against the patient unless the matter relates to payment for ~~his~~ the patient's health care or unless authorized under subsection ~~(1)(i)~~ (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

~~(i)~~(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

~~(j)~~(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ This part ~~authorizes~~ does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ in which disclosure is otherwise prohibited by law."

Section 26. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535~~(1)(i)~~(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535~~(1)(i)~~(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, ~~where~~ when authorized by law,

a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 27. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202~~. If~~ or if the health care information is ~~required in a subsequent~~ to be presented as evidence in a court proceeding

involving child abuse~~, the information may be disclosed only in camera and documents~~ pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 28. Section 50-16-605, MCA, is amended to read:

"50-16-605. Judicial, legislative, and administrative proceedings -- testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7)."

Section 29. Section 52-2-115, MCA, is amended to read:

"52-2-115. Department to accept custody of children ~~committed by courts~~. The department shall accept the ~~guardianship or~~ physical custody of children ~~committed by the courts to the department~~ transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3, and arrange for their care."

Section 30. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six

children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

(d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~(5) "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~(8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~(9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(9)~~(10) "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~(12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~(13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office, department, or other appropriate social services agency has made other provisions for the children's care."

Section 31. Section 52-2-603, MCA, is amended to read:

"52-2-603. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide

substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

Section 32. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 33. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

NEW SECTION. **Section 34. Repealer.** Section 41-3-610, MCA, is repealed.

NEW SECTION. **Section 35. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 36. Directions to code commissioner.** Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

- END -

SENATE BILL NO. 95

INTRODUCED BY STONINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; ~~REMOVING PERSONS PROVIDING DAY CARE FROM THE DEFINITION OF "A PERSON RESPONSIBLE FOR A CHILD'S WELFARE";~~ REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; ~~PROVIDING FOR INFORMAL PARENTAL AGREEMENTS;~~ PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS ~~THE DEPARTMENT CONSENTS AND INFORMS~~ THE COURT ~~OF~~ FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE ~~RESOURCES~~; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR ~~DEPARTMENT APPROVAL OF STIPULATIONS AND INCLUDING~~ AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, ~~41-3-423,~~ 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)~~(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)~~(c) ensure that there is no forced removal of a child from the family based solely on an ~~unsubstantiated~~ allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

~~(f)~~(d) recognize that a child is entitled to assert the child's constitutional rights;

~~(g)~~(e) ensure that all children have a right to a healthy and safe childhood in a ~~nurturing~~ permanent ~~family or in the closest possible substitute~~ placement;

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted;~~ and

~~(j)~~(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever

appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

~~(a)~~(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)~~(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)~~(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)~~(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department SOLELY because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(B) A PERSON PROVIDING CARE IN A DAY-CARE FACILITY;

~~(c)~~(~~b~~)(C) an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~(~~c~~)(D) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or

neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a ~~child's health or welfare~~ child;

(ii) substantial risk of physical or psychological harm to a ~~child's health or welfare~~ child; or

(iii) abandonment.

(b) The term includes actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a ~~child's health or welfare~~ child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was~~

~~abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~(11) "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~(12) "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~(13) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~(14) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~(15) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~(16) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was

abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision SOLELY because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian

or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction ~~and venue~~. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the

court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) ~~The~~ Either the county where a youth is located or a county where the youth's parent or guardian resides has initial jurisdiction over a youth alleged to be a youth in need of care. ~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~"

Section 4. Section 41-3-113, MCA, is amended to read:

"41-3-113. Appeals. (1) Appeals of court orders or decrees made under this part ~~shall~~ must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from~~; however, the~~ and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."

Section 5. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group ~~conference~~ decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to

operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having ~~legal~~ physical custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ informal parental agreements or other arrangements acceptable to the agency FOR THE CARE OF THE CHILD have been made ~~that protect the health and safety of the child~~. BY THE PARENTS.

(4) ~~A~~ Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within ~~10~~ 20 days~~, excluding weekends and holidays~~, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(4)~~(6) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 7. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

~~(iv)~~(v) termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~(vi) appointment of a guardian pursuant to 41-3-444;

~~(vi)~~(vii) a determination that preservation or reunification services need not be provided; or

~~(vii)~~(viii) any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vi)~~ (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under

this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

~~(iii)~~(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (A) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of ~~all petitions~~ the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(B) COPIES OF ALL OTHER PETITIONS MUST BE SERVED BY CERTIFIED MAIL. IF SERVICE IS BY CERTIFIED MAIL, THE DEPARTMENT MUST RECEIVE A RETURN RECEIPT SIGNED BY THE PERSON TO WHOM THE NOTICE WAS MAILED FOR THE SERVICE TO BE EFFECTIVE. SERVICE OF THE NOTICE IS CONSIDERED TO BE EFFECTIVE IF, IN THE ABSENCE OF A RETURN RECEIPT, THE PERSON TO WHOM THE NOTICE WAS MAILED APPEARS AT THE HEARING.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group ~~conference~~ decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's

parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) ~~Orders~~ If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

~~**Section 8.** Section 41-3-423, MCA, is amended to read:~~

~~**"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, informal parental agreements, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.~~

~~(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or~~

~~reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:~~

~~(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;~~

~~(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;~~

~~(c) committed aggravated assault against a child;~~

~~(d) committed neglect of a child that resulted in serious bodily injury or death; or~~

~~(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.~~

~~(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:~~

~~(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;~~

~~(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:~~

~~(i) visiting the child at least monthly when physically and financially able to do so; or~~

~~(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and~~

~~(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.~~

~~(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:~~

~~(i) adjudicated in Montana to be the father of the child for the purposes of child support; or~~

~~(ii) recorded on the child's birth certificate as the child's father.~~

~~(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.~~

~~(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever~~

~~steps are necessary to finalize the permanent placement of the child.~~

~~(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used."~~

Section 8. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure consents and informs~~ the court FINDS AFTER NOTICE AND A HEARING THAT THE EXPENDITURE IS REASONABLE AND that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 9. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) ~~A~~ Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within ~~10~~ 20 days~~, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are

needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 10. Section 41-3-434, MCA, is amended to read:

"41-3-434. Stipulations. Subject to approval by the ~~department and the~~ court, ~~a parent or parents, guardian, or other person having legal custody~~ THE PARTIES may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~

(3) the disposition; or

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."

Section 11. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the

child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible ~~according to the Montana Rules of Evidence~~ ~~AT THE DISCRETION OF THE PRESIDING JUDGE~~ ACCORDING TO THE MONTANA RULES OF EVIDENCE.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations.

The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ may make ~~written~~ oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless ~~the department consents and informs~~ the court FINDS AFTER NOTICE AND A HEARING THAT EXPENDITURE IS REASONABLE AND that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 12. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition -- hearing -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional

issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(b)~~(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~(f) order further care and treatment as the court considers in the best interests of the child that does

not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 13. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to

make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department ~~does not require that the child be placed in substitute care~~ ALLOWS THE DEPARTMENT TO PLACE A CHILD IN CARE PROVIDED BY A CUSTODIAL OR NONCUSTODIAL PARENT, KINSHIP FOSTER HOME, YOUTH FOSTER HOME, YOUTH GROUP HOME, YOUTH SHELTER CARE FACILITY, OR INSTITUTION.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody~~, not to exceed a total of 6 months,~~, NOT TO EXCEED 6 MONTHS, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody when the child is in a planned ~~alternative~~ permanent ~~placement~~ living arrangement pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) dismissal.

~~(3)~~(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 14. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan

hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall CONDUCT A HEARING AND make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court FINDS AFTER NOTICE AND A HEARING THAT THE EXPENDITURES ARE REASONABLE AND that resources are available for payment. The department is the payor of last

resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement ~~for a child if the evidence demonstrates~~ established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 15. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for ~~a planned permanent living arrangement~~ long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed."

Section 16. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to

41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(2)~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~(5) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~(6) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 17. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ a child to any of the circumstances listed in 41-3-423(2)(a) through

(2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 18. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ permanent placement proceedings held pursuant to ~~41-3-610~~ 41-3-445."

Section 19. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 20. Section 42-1-103, MCA, is amended to read:

"42-1-103. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual."

Section 21. Section 42-3-212, MCA, is amended to read:

"42-3-212. Court waiver for relatives. In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement and postplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.~~"

Section 22. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records -- nonidentifying information -- consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; and

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 23. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate -- certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 24. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery

in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ the patient's health care or unless authorized under subsection ~~(1)(i)~~ (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

~~(i)~~(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

~~(j)~~(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ This part ~~authorizes~~ does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ in which disclosure is otherwise prohibited by law."

Section 25. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535~~(1)(i)~~(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of

the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535~~(1)(i)~~(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, ~~where~~ when authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 26. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of

the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. ~~If~~ or if the health care information is ~~required in a subsequent~~ to be presented as evidence in a court proceeding involving child abuse~~, the information may be disclosed only in camera and documents~~ pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 27. Section 50-16-605, MCA, is amended to read:

"50-16-605. Judicial, legislative, and administrative proceedings -- testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7)."

Section 28. Section 52-2-115, MCA, is amended to read:

"52-2-115. Department to accept custody of children ~~committed by courts~~. The department shall

accept the ~~guardianship or~~ physical custody of children ~~committed by the courts to the department~~ transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3, and arrange for their care."

Section 29. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

(d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~(5) "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~(8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or

medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~(9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(9)~~(10) "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~(12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~(13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office, department, or other appropriate social services agency has made other provisions for the children's care."

Section 30. Section 52-2-603, MCA, is amended to read:

"52-2-603. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

Section 31. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 32. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

NEW SECTION. **Section 33. Repealer.** Section 41-3-610, MCA, is repealed.

NEW SECTION. **Section 34. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 35. Directions to code commissioner.** Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

- END -

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)~~(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)~~(c) ensure that there is no forced removal of a child from the family based solely on an ~~unsubstantiated~~ allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

~~(f)~~(d) recognize that a child is entitled to assert the child's constitutional rights;

~~(g)~~(e) ensure that all children have a right to a healthy and safe childhood in a ~~nurturing~~ permanent ~~family or in the closest possible substitute~~ placement;

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted;~~ and

~~(j)~~(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth

parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

~~(a)~~(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)~~(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)~~(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)~~(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(b) a person providing care in a day-care facility;

~~(c)~~(c) an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized

by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a ~~child's health or welfare~~ child;

(ii) substantial risk of physical or psychological harm to a ~~child's health or welfare~~ child; or

(iii) abandonment.

(b) The term includes actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a ~~child's health or welfare~~ child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~(11) "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~(12) "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~(13) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~(14) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~(15) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~(16) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was

abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction ~~and venue~~. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) ~~The~~ Either the county where a youth is located or a county where the youth's parent or guardian resides has initial jurisdiction over a youth alleged to be a youth in need of care. ~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~"

Section 4. Section 41-3-113, MCA, is amended to read:

"41-3-113. Appeals. (1) Appeals of court orders or decrees made under this part ~~shall~~ must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from~~; however, the~~ and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."

Section 5. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless

otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group ~~conference~~ decisionmaking meeting for the purposes of assessing the needs of the child and family,

formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having ~~legal~~ physical custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ arrangements acceptable to the agency for the care of the child have been made~~.~~ by the parents.

(4) ~~A~~ Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within ~~10~~ 20 days~~, excluding weekends and holidays~~, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(4)~~(6) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 7. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

~~(iv)~~(v) termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~(vi) appointment of a guardian pursuant to 41-3-444;

~~(vi)~~(vii) a determination that preservation or reunification services need not be provided; or

~~(vii)~~(viii) any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vi)~~ (1)(a)(vii) or any other

relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

~~(iii)~~(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of ~~all petitions~~ the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the

department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group ~~conference~~ decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) ~~Orders~~ If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 8. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.

(1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended

family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 9. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) ~~A~~ Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within ~~10~~ 20 days~~, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means,

or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 10. Section 41-3-434, MCA, is amended to read:

"41-3-434. Stipulations. Subject to approval by the court, ~~a parent~~ the parties may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~

(3) the disposition; or

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."

Section 11. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication -- temporary disposition -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers

relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible ~~according to the Montana Rules of Evidence~~ according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ may make ~~written~~ oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or

to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 12. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition -- hearing -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(b)~~(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 13. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody~~, not to exceed a total of 6 months~~,, not to exceed 6 months, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody when the child is in a planned ~~alternative~~ permanent ~~placement~~ living arrangement pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) dismissal.

~~(3)~~(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~(9) A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 14. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement ~~for a child if the evidence demonstrates~~ established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 15. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months

of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for ~~a planned permanent living arrangement~~ long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed."

Section 16. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(2)~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~(5) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~(6) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 17. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 18. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ permanent placement proceedings held pursuant to ~~41-3-610~~ 41-3-445."

Section 19. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 20. Section 42-1-103, MCA, is amended to read:

"42-1-103. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual."

Section 21. Section 42-3-212, MCA, is amended to read:

"42-3-212. Court waiver for relatives. In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement and postplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.~~"

Section 22. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records -- nonidentifying information -- consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; and

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 23. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate -- certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 24. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ the patient's health care or unless authorized under subsection ~~(1)(i)~~ (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

~~(i)~~(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

~~(j)~~(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ This part ~~authorizes~~ does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ in which disclosure is otherwise prohibited by law."

Section 25. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535~~(1)(i)~~(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535~~(1)(i)~~(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, ~~where~~ when authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 26. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. ~~If~~ or if the health care information is ~~required in a subsequent~~ to be presented as evidence in a court proceeding involving child abuse~~, the information may be disclosed only in camera and documents~~ pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 27. Section 50-16-605, MCA, is amended to read:

"50-16-605. Judicial, legislative, and administrative proceedings -- testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the

release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7)."

Section 28. Section 52-2-115, MCA, is amended to read:

"52-2-115. Department to accept custody of children ~~committed by courts~~. The department shall accept the ~~guardianship or~~ physical custody of children ~~committed by the courts to the department~~ transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3, and arrange for their care."

Section 29. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

(d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~(5) "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care

includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~(8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~(9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(9)~~(10) "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~(12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~(13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office, department, or other appropriate social services agency has made other provisions for the children's care."

Section 30. Section 52-2-603, MCA, is amended to read:

"52-2-603. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this

subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

Section 31. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 32. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit

in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

Section 33. Repealer. Section 41-3-610, MCA, is repealed.

Section 34. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 35. Directions to code commissioner. Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

- END -

I hereby certify that the within bill,
SB 0095, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 95

INTRODUCED BY STONINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA.

FISCAL NOTE

Bill #: SB0095 **Title:** Revise child abuse and neglect laws

Primary Sponsor: Stonington, E **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	$0	$0
Revenue:		
General Fund	$0	$0
Net Impact on General Fund Balance:	$0	$0

☐ Significant Local Gov. Impact ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts

☐ Dedicated Revenue Form Attached ☐ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Judiciary

1. This bill affects the Judicial Branch by increasing the number of days to conduct a show cause hearing Youth in Need of Care cases from 10 to 20 days. This will have no fiscal impact on the Judiciary.
2. New Section 34 repeals section 41-3-610. The reviews required under this section are covered in statute, Section 41-3-445, therefore, there would be no fiscal impact to the Judiciary of this legislation.

Department of Public Health and Human Services

3. This bill has no fiscal impact.

Department of Justice

4. This bill has no fiscal impact.

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on January 22, 2003 at 3:10 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:
Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note:
Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: SB 95, 1/15/2003
Executive Action:

HEARING ON SB 95

Sponsor: **SEN. EMILY STONINGTON, SD 15, Bozeman**

Proponents: **Shirley Brown, Department of Public Health & Human Services (DPHHS)**
Beth Satre, MT Coalition Against Domestic Violence & Sexual Assault
Twila Costigan, MSF, APA
Kathy Deserly, Helena

Informational Testimony: **Mike Halligan, Missoula**

Opponents: None.

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, said SB 95 was requested by DPHHS to clarify and clean up language. She said child abuse and neglect statutes are very difficult and have been amended significantly in the last three legislatures. In 1997, the statute was amended to provide the permanency plan hearings and to establish time limits on both temporary and investigative authority and legal custody. In 1999, the legislature amended the child abuse of Montana to comply with the Federal Adoption Safe Families Act (FASFA) of 1997. The 2001, legislature passed legislation with reorganized and clarified legal procedure in filing child abuse and neglect petitions. It also shortened the time frames for show cause hearings and codified time frames for judication and disposition of cases to maintain compliance with the FASFA. What the division is really after is, to ensure children a safe, stable, and permanent family; to ensure foster care placement is temporary and to require parents to accept responsibility for their actions and for the protection for their children. The 2003 legislature has the opportunity to build on the foundation in keeping with FASFA. The department is now offering amendments to improve on areas that work for children and families and eliminate changes that have proven difficult, if impossible to carry out and practice. All these changes, **SEN. STONINGTON** stated, was within federal guidelines.

Proponents' Testimony:

Shirley Brown, DPHHS, Administrator for Child and Family Services Division, handed out three items. One was a copy of an article in the Helena Independent Record, dated 1-22-2003 **EXHIBIT(phs13a01).** The second was a copy of a section by section analysis of SB 95

EXHIBIT(phs13a02). The third was a copy of **Ms. Brown**'s testimony, which includes an outline on the last page, what sections she would go over with the committee members **EXHIBIT(phs13a03).** This last page correlated with exhibit 2.

{Tape: 1; Side: A}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 11.1}

Kathy Deserly, National Indian Child Welfare Association (ICWA), stated her support for SB 95. She informed the committee that before working for the National Indian Child Welfare Association, she worked for Child and Family Services Division (CFSD), from 1996 - 2000, as a staff person identified to work on Indian child welfare issues. She pointed areas of the bill that are important to Indian families because when she worked for CFSD, 30% of the children in the system were Indian. **Ms. Deserly** said there were several references throughout the bill that address the exceptions to ICWA. She pointed out one reference to placing a child with a family member or relative. This is especially good for Indian children, when able to look at a non custodial parent as an option, as well as relatives. The court may refer to relatives, when there is the elimination of the pre and post placement evaluation, where a child is placed by their parent with an adoptive extended family member. This eliminates some legalities in the system. **Ms. Deserly** also addressed the section amending the disclosure of records for adoption. She thought this critical. When she worked for the division, she had many adult adoptee s' come to her and say they were adopted as a child and know they are Indian, but do not know what tribe they belong to. It was not so much to see if they had money coming to them, as it was to get a sense of who they are. The Indian Child Welfare Act outlines within law that adoptees' have that right. She added that non-Indian adoptive parents would call her for information for their child who was turning 18, knowing the child was a member of a tribe. They wanted their child to have education benefits that might be coming to them. She said it was good to have in policy, to help those families get those records. The last thing **Ms. Deserly** pointed out the language surrounding kinship care providers. This is an area impacting Native American families and can only serve to improve the state's compliance with ICWA. She felt very positive about SB 95 and encouraged support for the bill.

Twila Costigan, Montana State Foster Adoptive Parent Association, supported SB 95. She stated concern for parents who need help for their children but are not able to access it. It comes back to funding Medicaid so parents can get help for their children. The second thing she pointed out her support for, found on page 21, line 25, was adding the ability to use hearsay evidence made

by the youth in the adjudicated hearing. She thought this to be a positive move on the division's part.

{Tape: 1; Side: B; Approx. Time Counter: 11.2 - 16.7}

Beth Satre, MT Coalition Against Domestic Violence & Sexual Assault, wanted to stand up and say the coalition supports the efforts of the department to clarify the pieces of statute in SB 95 that make the children in Montana more safe.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES told **Ms. Brown** her explanation of a bill was one of the best he had ever heard. He said his first concern was on page three, stating how this would take the professionals out of the loop when the alleged abuse has occurred in a daycare. The way he understood it, the department would be using the licensing people to make the judgment call and then it would go to law enforcement. He did not think them as skilled as CFSD were in separating fact from fiction and correctly weighing the emotional issues. **SEN. GRIMES** said he was very concerned about that and understood the financial and time consuming pressures, and wanted to know if **Ms. Brown** had anything to ease his concerns. He thought there should be skilled people in there that would be her subordinates. **Ms. Brown** said she probably could not convince him it was a good thing. What she could try to do is ease his mind a little bit.

{Tape: 1; Side: B}

Ms. Brown continued to answer **SEN. GRIMES** question by saying licensing services handles the situation and law enforcement assists. If someone called with an issue in child care, she thought the way it worked is that they would be told it is a licensing issue then it would be referred to the licensing people to do the investigation on what possible mal-treatment or allegations. If it then becomes a law enforcement issue, then CFSD could be called to assist law enforcement in the investigation. She said either licensing or law enforcement could call them and ask for assistance.

SEN. GRIMES asked **SEN. BRENT CROMLEY** if he was going to ask some questions about the hearsay issue. **SEN. CROMLEY** said he was not, but would be willing to respond to any questions **SEN. GRIMES** might have.

SEN. GRIMES asked about the adoption issue for Native Americans, and their need for information. He said he understood the need for that. He said a few years ago there was a bill to redo the adoption, which was incredibly sensitive. There were so many people who attended the hearing, including parents who gave their child up, who do not want contact. This bill says the information will be released. He asked **Ms. Brown** if this issue has been dealt with on a public level yet and she said not really. The genesis of this has been worked on over the years with Bureau of Indian Affairs. They have a lot of information and want those placed through the adoption agencies to have it. On the other side, are the adult adoptees, whom several calls have been received from who are wanting information. There are also the ones turning 18 wanting information, who know they are from a tribe, but do not know which one. **Ms. Brown** said the division wanted to find what was in the best interest of both the adoptee and the parent who gave the child up. If it has been a recent adoption, or had taken place in the last ten years, the trend has been more open. She thought there were a lot of parents who relinquish children who come back for information also.

SEN. GRIMES asked if it were possible to give out the tribe and the percentage without the actual birth certificate and the names of the birth parents. **Ms. Brown** did not think so, but referred the question to **Kathy Deserly.**

SEN. SCHMIDT asked if **Mr. Halligan** would comment.

Informational Testimony:

Mike Halligan, Self, referred to page eight regarding the provisions in the bill on appeal and he thought they were particularly good. In many cases where there might be an appeal from a district court case, information was not known up to two years. The child was in hiatus, while the appeal is going on. This allows a district court judge to be able to deal with that issue while it is on appeal. Whether the child goes back to a parent or stays in foster care, at least there is stability in this instance. **Mr. Halligan** said if it is going to take up to two years, it gives parties an opportunity to talk with the judge about other forms of treatment plans or conditional issues that need to be addressed. The judge may want to hold hearings that can be worked on during that time. This part is a proactive provision for parents as much as it is for children because it gives them the opportunity to continue to work on it. The opportunity for parents is in the providing for informal parental agreements on page 12, lines 11 and 12. This gives the department the chance to square things away in a home without having to go

to court. He also thought page 23, line 30, stating the order to place the child with the non-custodial parent, superceding any existing custodial order, was good. It maintains some sense of stability for the child.

SEN. TRUDI SCHMIDT thought page 35, line 21 "the department may release a copy of the adoptee's original birth certificate..." sounded permissive using the word "may." She wanted to know if there were reasons for not automatically turning it over. **Ms. Brown** said the word "may" is discretionary. The request would come through the department, someone in the department would then take a look at the documents. If there was a clear sign that the records should not be released, the department would than advise them to go through the normal process.

SEN. SCHMIDT wanted to know if the searching process is still the same throughout the department. **Ms. Brown** said yes.

SEN. ROBERT DEPRATU wanted to know what criteria was needed in order to release information and did it identify the parents. **Ms. Brown** said if it were medical information they needed that does not identify the parents, the information can be released. The department can release non-identifying information. What cannot be released was any information that would lead to the identity of the parents.

SEN. CROMLEY needed clarification on page 3, line 23, regarding voluntary surrender of a child to the department. **Ms. Brown** explained that abandonment has become more of an issue since the reduction in the mental health coverage. There had been cases where a parent has come to the department and wanted to relinquish their child. Line 23 is aimed specifically at those parents who relinquish their child and no abuse or neglect is involved. It is a way some parents have gotten access to services because the child then becomes a ward of the state and services must be rendered. She said it is a funding issue. The department has to thoroughly investigate and determine if the parents are giving up the child to access services for their child. If that is the case, the services will not be available to them.

SEN. CROMLEY was concerned about adequate additional investigation of the non-custodial parent as to whether the parent was fit or had been already declared unfit. **Ms. Brown** said by the time the department gets to the dispositional hearing, the child will have been cared for at least a month or two. The departmental policy when the social worker was investigating whether the non-custodial parent was a viable placement option for the child, was the department does a CPS

background check, asking information about the parent. CFSD also requests a copy of the dissolution decree to see what the status was and if there was information that would say whether the parent was a good option or not.

SEN. JOHN ESP had a question on page 14 regarding the petition to sever the parent-child legal relationship. He wanted to know what other types of petitions would not be personally served
Ms. Brown said the department generally start with a petition for emergency protective services combined with either a petition for a temporary investigative authority or temporary legal custody. It depends on the facts of the case. The first petition would be personally served and then a follow-up petition. If an emergency protective services and a temporary investigative authority are started for temporary legal custody, it would not be personally served. If the process started with a petition for emergency protective services and temporary legal custody, and the department had to be involved at the end of the six-month period it is a petition for extension of temporary legal custody or it is a motion. If a petition to extend temporary legal custody was filed, it would have to be served by mail. If the CFSD had to stay involved in the case, then a petition would have to be filed for termination. The petition to terminate parental rights would be personally served.

SEN. ESP asked why page 21, line 25 may be controversial. **Ms. Brown** said some people believed that hearsay evidence should not be allowed in court.

SEN. ESP asked if the controversial part of that, changes the admission of hearsay statements other than those allowed according the Montana Rules of Evidence. **Ms. Brown** said in the rules of evidence there is hearsay exceptions and hearsay exclusions. There is a whole list of circumstances being argued about what someone else has said getting into court. The allowing of hearsay evidence states the child 's statements may not fit in one of those exclusions or exceptions to the hearsay rule and still be admissible.

{Tape: 2; Side: A}

SEN. ESP asked what examples were there when the child is left in the home. **Ms. Brown** said a circumstance could be when there was abuse and it was serious enough that the social worker and the county attorney determined getting a petition for temporary legal custody was necessary. However, the parents were willing to work with the department and services were available to provide in the home. She said that type of situation did not come up often. There had been three instances in the last few years, where the

social worker's recommendation was temporary legal custody, but leave the child in the home with a lot of monitoring and services. The judge says no, that cannot be done because the child has to be removed from the home with a petition for temporary legal custody.

SEN. ESP asked if there was another process to substitute the repealer in section 34, page 43. **Ms. Brown** said the requirement for a hearing 180 days after termination is an old federal requirement. The requirement for a permanency plan hearing has been in statute since 1997. The federal requirement for a permanency plan hearing replaces the federal requirement for a review hearing after 180 days. If the child had been in care for 12 months since the court said the child was abused and neglected, or 12 months after the first sixty days in care, the permanency plan hearing has to be held. The child can be in care a year to 14 months. Then a permanency plan hearing must be held every 12 months there after until the child is in permanent placement. The timing could be such that the review is not done following termination, and it is not combined, then four months later there is a permanency plan hearing. The permanency plan hearing is the current requirement that replaced the review hearing after 180 days.

SEN. HARRINGTON asked **Ms. Brown** what her experience was with judges in a situation regarding page 18, line 27. He thought judges chose to do virtually what they want. **Ms. Brown** said the line gave more options than before.

SEN. ESP asked **Roy Kemp, Quality Assurance Division, DPPHS**, what his capabilities were in investigating abuse in daycare facilities. **Mr. Kemp** said the licensing regulations which form minimum requirements are facility focused. His authority and enforcement relate to the license. In other words, can the daycare operate and meet the requirements. Statutorily, he is not able to interview children without their parents. That kind of thing could be hampering, as it relates to a CPS person. The actions **Mr. Kemp** could take would be against the facility license and not against any person. If a person is accused of abuse and neglect, his recourse would be to refer to the police in the criminal matter as opposed to administrative matter. He cannot take action against a license because of a matter that might fall into abuse and neglect. It would have to relate to lack of supervision by the owner, or staff specifically. That is a licensing violation and he can take licensing action to correct it.

SEN. O'NEIL asked what investigation could be done if the provider of the daycare were doing something, could **Mr. Kemp**

investigate adequately. **Mr. Kemp** said only through the license and the licensing requirements.

SEN. EMILY STONINGTON asked if it were a criminal matter, would **Mr. Kemp** be required to report a situation. **Mr. Kemp** said yes.

Closing by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, thanked everyone who contributed to such complicated statutes and for their concern.

ADJOURNMENT

Adjournment: 4:50 P.M.

_____
SEN. JERRY O'NEIL, Chairman

_____
ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT(phs13aad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 7, 2003 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:
Rep. Bill Thomas, Chairman (R)
Rep. Arlene Becker, Vice Chairman (D)
Rep. Mark Noennig, Vice Chairman (R)
Rep. Tom Facey (D)
Rep. Ray Hawk (R)
Rep. Daniel S. Hurwitz (R)
Rep. Larry Jent (D)
Rep. Penny Morgan (R)
Rep. Holly Raser (D)
Rep. Don Roberts (R)
Rep. Ron Stoker (R)

Members Excused: Rep. Steven Gallus (D)
Rep. Jonathan Windy Boy (D)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
CJ Johnson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of content it refers to.

Committee Business Summary:
Hearing & Date Posted: SB 94, SB 95, 3/3/2003
Executive Action: None

HEARING ON SB 94

Sponsor: **SEN. EMILY STONINGTON, SD 15, Bozeman, Montana**

Opening Statement by Sponsor:

SEN. STONINGTON opened the hearing on SB 94 stating that this bill is being introduced at the request of the Department of Health and Human Services (DPHHS). This bill will provide a greater wrap-around of services for children. It is a multi-agency bill that creates a way to combine all agencies working with high-risk children.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.9}

Proponents' Testimony:

Dan Anderson, State of Montana, Department of Public Health and Human Services (DPHHS), stated that SB 94 is the result of a long-term process. The bill addresses the most cost-effective way of dealing with high-risk children who have high-service needs. SB 94 defines a target group of children with severe emotional disturbance, in and out-of home placement and the need for a multi-need agency form of service. **Mr. Anderson** stated that these kids are extremely expensive to the State of Montana. Mr. Anderson explained specifically how this bill would work.

{Tape: 1; Side: A; Approx. Time Counter: 4.9 - 8.2}

Bonnie Adee, State of Montana, Mental Health Ombudsman, spoke in support of SB 94. She presented her written testimony to the Committee. Ms. Adee outlined what this bill would accomplish.

EXHIBIT(huh48a01)

{Tape: 1; Side: A; Approx. Time Counter: 8.2 - 14.9}

Janie McCall, Montana Children's Initiative, spoke in support of SB 94. Ms. McCall gave testimony to the Committee about the various federal programs, grants and programs that Montana would like to participate in. She spoke of the pilot programs and where they are located. Within her testimony, Ms. Call gave an overview about Kids Integrated Delivery Systems (KIDS).

{Tape: 1; Side: A; Approx. Time Counter: 14.9 - 20}

Audrey Ahlums, Board of Crime Control, stated her support of SB 94. She spoke about the Youth Justice Council, and the funding that has been supplied through federal grants for support of the Children's Initiative group.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 22.1}

Allen Davis, Montana Mental Health Association, spoke in support of SB 94.

{Tape: 1; Side: A; Approx. Time Counter: 22.1 - 23.5}

Rick Chiotti, State of Montana, Office of Public Instruction (OPI), spoke in support of SB 94 on behalf of Linda McCullough, Director, OPI.

{Tape: 1; Side: A; Approx. Time Counter: 23.0 - 24.3}

Chris Christiaens, Montana Chapter of National Association of Social Workers, spoke in support of SB 94.

{Tape: 1; Side: A; Approx. Time Counter: 24.3 - 26.3}

Shirley Brown, State of Montana, Department of Health and Human Services, spoke in strong support of SB 94. Within Ms. Brown's testimony were many points of interest such as communication, accountability, addressing budget issues, participation of family members and maximum use of funding.

{Tape: 1; Side: A; Approx. Time Counter: 26.3 - 28.2}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NOENNIG, FACEY, STOKER, ROBERTS, HURWITZ, MORGAN, BECKER, and **HAWK** extensively questioned the sponsor, Mr. Anderson, Ms. Adee, Ms. McCall and Ms. Ahlum. Among the questions asked were the prohibitions within the current law, the pilot programs and the expansion thereof, the process to whom the teams report, medicaid funding and therapeutic group homes. Also queried was the process for accounts payable, what provisions are in place when an agency no longer has funding, out-of-state placements for residents, and the structure of multi-service agencies.

{Tape: 1; Side: A; Approx. Time Counter: 26.2 - 32.1}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 30}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 4.5}

Closing by Sponsor:

SEN. STONINGTON closed the hearing on SB 94 by stating that this bill will create a process and focus as to these children who are in extreme need and contribute to the extreme cost within agencies, it will also address the budget shortfalls within agencies.

{Tape: 2; Side: A; Approx. Time Counter: 4.5 - 6.3}

HEARING ON SB 95

Sponsor: SEN. EMILY STONINGTON, SD 15, Bozeman, Montana

Opening Statement by Sponsor:

SEN. STONINGTON opened the hearing on SB 95 by stating that this bill is in another part of the codes that will effect children and families within DPHHS. However, this is the child and family services department and this is their "omnibus" bill.

The bill was brought forth at the request of DPHHS. SB 95 will clarify language and amend several provisions of various titles that effect children and families.

{Tape: 2; Side: A; Approx. Time Counter: 6.3 - 11}

Proponents' Testimony:

Shirley Brown, State of Montana, Department of Public Health and Human Services, presented her written testimony to the Committee. This testimony referred to statutes that have been significantly amended by the past three legislatures. Her testimony included three types of amendments proposed for this bill that addressed specific sections.

EXHIBIT(huh48a02)
EXHIBIT(huh48a03)

{Tape: 2; Side: A; Approx. Time Counter: 11 - 30}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 15.6}

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, stated her support of SB 95. She spoke to the Committee about her organization's role in working with Child Protective Services (CPS).

{Tape: 2; Side: B; Approx. Time Counter: 15.6 - 16.7}

Chris Christiaens, Montana Chapter of National Association of Social Workers, spoke in favor of SB 95, and informed the Committee that his organization has over 500 licensed Social Workers in Montana who work directly with CPS/DPHHS. He stated that this is a clean-up bill that brings statute up to date and be in compliance with Federal law.

{Tape: 2; Side: B; Approx. Time Counter: 16.7 - 18}

Janie McCall, Montana Children's Initiative, spoke in support of SB 95 stating that this bill provides further protection for children who are abused and neglected. **Ms. McCall** said that in 2002, 3,500 kids were in out-of-home placement in the State of Montana.

{Tape: 2; Side: B; Approx. Time Counter: 18 - 20}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. MORGAN, NOENNIG, FACEY, and **RASER** asked the sponsor and Ms. Brown several questions about the responsibility of the department to pay for services when ordered, how to determine when a child is psychologically harmed, legal status while in temporary custody, adoption services from out-of-state providers, the time frame for cases to be assigned and resolution of those cases.

{Tape: 2; Side: B; Approx. Time Counter: 20 - 30}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 22.8}

Closing by Sponsor:

SEN. STONINGTON closed the hearing on SB 95 and urged the Committee to vote favorably on this and SB 94.

{Tape: 3; Side: B; Approx. Time Counter: 22.8 - 25.8}

REP. NOENNIG requested that a subcommittee be appointed to study this bill. **CHAIRMAN THOMAS** appointed **REPS. NOENNIG, JENT, RASER** and **BECKER** to this subcommittee.

CHAIRMAN THOMAS recognized **Ms. Fox, Legislative Staffer,** who informed the Committee that when two or more bills are to be coordinated, she is responsible for completing a "conflict check" for bills that are to be coordinated after the transmittal of bills is done in March.

ADJOURNMENT

Adjournment: 6:00 P.M.

_____
REP. BILL THOMAS, Chairman

_____
CJ JOHNSON, Secretary

BT/CJ

EXHIBIT(huh48aad)